

# CITIES AND TOWNS BULLETIN

## AND UNIFORM COMPLIANCE GUIDELINES ISSUED BY STATE BOARD OF ACCOUNTS

June 2002

### 2002 LAWS AFFECTING CITIES AND TOWNS

The following is a listing of laws enacted by the General Assembly that are related to cities, towns and municipally owned utilities. This is not intended to be an expression of a legal opinion. If you have any questions regarding legal interpretation, please consult your city or town attorney. We have listed the laws in public law order sequence and the references are to the Indiana Code.

Please note that such listing does not include any information pertaining to the current ongoing Special Session of the General Assembly.

PUBLIC LAW 2 – SENATE ENROLLED ACT 57 – EFFECTIVE JULY 1, 2002  
TITLE 32 RECODIFICATION – Recodifies all of Title 32 of the Indiana Code.

PUBLIC LAW 3 – HOUSE ENROLLED ACT 1010 – EFFECTIVE JULY 1, 2002  
ASSET FORFEITURE – Amends IC 34-24-4-1 – Allows certain recording equipment to be seized by a law enforcement agency.

PUBLIC LAW 16 – SENATE ENROLLED ACT 180 – EFFECTIVE JULY 1, 2002  
WIRELESS EMERGENCY TELEPHONE SYSTEM FUND – Amends IC 36-8-16.5-43 – Eliminates cities and towns from being eligible for the distributions made by State's Wireless Enhanced 911 Board.

PUBLIC LAW 31 – SENATE ENROLLED ACT 443 – EFFECTIVE JULY 1, 2002  
PUBLIC PURCHASES LAW - Amends IC 5-22-3-4 and IC 5-22-9-31 – Allows a city or town to receive offers by fax machine, e-mail or by means of another electronic system that has a security feature that protects the content of an electronic offer with the same degree of protection as the content of an offer that is not transmitted by electronic means. Allows a purchasing agency for a city or town to provide electronic access to a notice of a request for proposals through the electronic gateway administered by the State's Intelenet Commission.

INTERNET AUCTIONS OF SURPLUS PROPERTY - Adds IC 5-22-22-4.5 – Amends IC 5-22-22-5, 11, and 12 – Allows a city or town to dispose of surplus personal property using an Internet auction site that is approved by the State's Intelenet Commission and that is linked to the State's electronic gateway.

PUBLIC LAW 35 – HOUSE ENROLLED ACT 1005 – EFFECTIVE JULY 1, 2002  
CLASS A INFRACTIONS – Adds IC 35-45-3-3 – States that a person who throws a lighted cigarette, cigar, or match or other burning material from a moving motor vehicle commits a Class A infraction.

PUBLIC LAW 49 – HOUSE ENROLLED ACT 1238 – EFFECTIVE JULY 1, 2002  
STATE SURPLUS PROPERTY – Amends IC 5-22-21-7 – Requires the Commissioner of the State Department of Administration to determine a market price for State surplus property which is required to be first offered to all political subdivisions. The Department of Administration shall sell the surplus property to the highest governmental bidder whose bid equals or exceeds the market price determined by the Commissioner.

**PUBLIC LAW 50 – HOUSE ENROLLED ACT 1240 – EFFECTIVE JULY 1, 2002**

**ORDINANCE ENFORCEMENT – REAL PROPERTY** – Amends IC 36-1-6-2 – Allows a city or town to issue a bill to the owner of real property for the costs incurred to bring the real property into compliance with the city or town's ordinance, including administrative costs and removal costs. Provides that if the owner of the real property fails to pay such bill, the city or town may certify the amount of the bill to the County Auditor. The County Auditor shall place the amount certified on the tax duplicate and the charges shall be collected as delinquent taxes are collected.

**PUBLIC LAW 54 – SENATE ENROLLED ACT 243 – EFFECTIVE JULY 1, 2002**

**STRUCTURES NEAR AIRPORTS** – Amends IC 8-21-10-2, IC 8-21-10-3, IC 8-21-10-7, IC 36-7-4-604 and IC 36-7-4-918.5 – Sets out new Indiana Department of Transportation (INDOT) requirements for obtaining a permit to build certain structures near a public-use airport. Requires a local board of zoning appeals to receive copies of a permit issued by INDOT or the FAA and evidence that notice was delivered to a public-use airport not less than sixty (60) days before a zoning proposal is considered.

**PUBLIC LAW 56 – SENATE ENROLLED ACT 416 – EFFECTIVE JULY 1, 2002**

**ELECTRIC UTILITIES – ANNEXATION OF AREA BEYOND ASSIGNED SERVICE AREA** - Amends IC 8-1-2.3-6 – States that if a municipality that owns an electric utility that furnishes retail electric service to the public annexes an area beyond the assigned service area of its municipally owned utility, the utility may petition the Indiana Utility Regulatory Commission (IURC) to change the assigned service area to include the annexed area upon the filing of a petition.

**PUBLIC LAW 57 – SENATE ENROLLED ACT 466 – EFFECTIVE JULY 1, 2002**

**SHOOTING RANGES** – Repeals IC 14-22-31.5-4 – Removes the prohibition of cities and towns regulating shooting ranges in suburban areas.

**PUBLIC LAW 61 – SENATE ENROLLED ACT 59 – EFFECTIVE JULY 1, 2002**

**PUBLIC EMPLOYEES' RETIREMENT FUND (PERF)** – Amends IC 5-10.2, IC 5-10.3 and IC 5-13-5-5 – Adds IC 5-10.2-3-1.2, IC 5-10.2-3-6.2 and IC 5-10.2-3-10 – Allows PERF to invest in pooled funds. Allows certain members to purchase service credits. Allows political subdivisions to transact business with PERF through the use of electronic funds transfer. Makes several other changes to the PERF laws.

**PUBLIC LAW 62 – SENATE ENROLLED ACT 60 – EFFECTIVE JULY 1, 2002**

**DEATH IN THE LINE OF DUTY – 1925, 1937 and 1977 POLICE AND FIREFIGHTERS RETIREMENT PLANS** – Amends IC 36-8-6-10.1, IC 36-8-7-12.4, IC 36-8-7.5-14.1, IC 36-8-14.1 – Redefines the term "dies in the line of duty" to mean death that occurs as a direct result of personal injury or illness caused by incident, accident, or violence that results from actions while the police officer or firefighter is performing his/her duties.

**DEFERRED RETIREMENT OPTION PLAN (DROP) – 1925, 1937 AND 1977 RETIREMENT PLANS** – Adds IC 36-8-8.5 – Requires a member who elects to enter DROP to agree to the following:

- (1) The member shall execute an irrevocable election to retire on the DROP retirement date and shall remain in active service until that date.
- (2) While in the DROP, the member shall continue to make contributions to the applicable fund under the provisions of that fund.
- (3) The member shall elect a DROP retirement date not less than twelve (12) months and not more than thirty-six (36) months after the member's DROP entry date.
- (4) The member may not remain in the DROP after the date the member reaches any mandatory retirement age that may apply to the member.
- (5) The member may make an election to enter the DROP only once in the member's lifetime.

## PUBLIC LAW 62 – SENATE ENROLLED ACT 60 – EFFECTIVE JULY 1, 2002 (Continued)

The retirement benefit for a member who enters the DROP and retires on the member's DROP retirement date is determined under IC 36-8-8.5 rather than under the provisions of the applicable fund.

A member who retires on the member's DROP retirement date may elect to receive a retirement benefit in one of the following forms:

- (1) A retirement benefit paid by and calculated under the provisions of the applicable fund as if the member had never entered the DROP.
- (2) A retirement benefit paid by the applicable fund and consisting of:
  - (A) the DROP frozen benefit; plus
  - (B) an additional amount, paid as the member elects, calculated by multiplying:
    - (i) the amount of the DROP frozen benefit; by
    - (ii) the number of months that the member was in the DROP.

A member who chooses the retirement benefit must elect to receive the additional amount as:

- (1) a lump sum paid on the member's DROP retirement date; or
- (2) three (3) equal annual payments commencing on the member's DROP retirement date and thereafter paid on the anniversary of the member's DROP retirement date.

In calculating a member's retirement benefit, the applicable fund must use the lesser of:

- (1) the member's actual years of service; or
- (2) thirty-two (32) years of service.

The retirement benefits for a member who exits the DROP for any reason other than retirement on the member's DROP retirement date are calculated under the provisions of the applicable fund as if the member had never entered the DROP.

Requires a member who enters the DROP to exit DROP at the earliest of:

- (1) the member's DROP retirement date;
- (2) thirty-six (36) months after the member's DROP entry date;
- (3) the mandatory retirement age applicable to the member, if any; or
- (4) December 31, 2007.

## PUBLIC LAW 67 – SENATE ENROLLED ACT 144 – EFFECTIVE JULY 1, 2002

CITY CONTROLLER – LIABILITY – Adds IC 34-30-2-153.3, IC 34-30-2-153.4, IC 34-30-2-153.5, IC 36-3-5-2.6 – Amends IC 36-4-10-2 – States that a city controller is not liable, in an individual capacity, for any act or omission incurring in connection with the performance of the controller's duties as a fiscal officer, unless the act or omission constitutes gross negligence or an intentional disregard of the controller's duties.

## PUBLIC LAW 74 – SENATE ENROLLED ACT 283 – EFFECTIVE MARCH 20, 2002

JOINT SOLID WASTE MANAGEMENT DISTRICTS – Adds IC 5-11-1-9.7 and IC 13-21-4-2.5 – Amends IC 13-21-3-1, IC 13-21-4-2, 3, 4, 5, 6 and 7, and IC 13-21-5-21 – Repeals IC 13-21-4-8 and 9 – Requires the State Board of Accounts to examine and issue a report on the responsibility for legal obligations entered into by a joint solid waste management district upon the withdrawal or removal of a county from the joint district.

## PUBLIC LAW 86 – SENATE ENROLLED ACT 178 – EFFECTIVE JULY 1, 2002

CHILD SUPPORT WITHHOLDINGS – Amends IC 31-16-15-16 – Requires an employer required to withhold child support from more than one (1) obligor and employs more than fifty (50) employees to make payments of such withholdings to the State Central Collection Unit through electronic funds transfer.

**PUBLIC LAW 98 – HOUSE ENROLLED ACT 1158 – EFFECTIVE MARCH 21, 2002**

**GUARANTEED ENERGY SAVINGS CONTRACTS** – Amends IC 36-1-12.5-1 and 10 – Adds IC 36-1-12.5-0.5, 0.7, 2.5, 3.5, 3.7, 11 and 12 – Makes certain changes in the guaranteed energy savings contracts law. Provides that actual savings may include stipulated savings that are documented by industry engineering standards, and that causally connected work is work that is required to properly implement an energy conservation measure. Provides that an energy conservation measure may include future labor, contracted services, and related capital expenditures. Requires a governing body to file a copy of certain information with the Department of Commerce. Provides that stipulated savings may be used in determining actual savings for various energy conservation measures. Requires a contract that includes stipulated savings to specify the methodology used to calculate the savings using industry engineering standards. Provides conditions under which improvements that are not causally connected to an energy conservation measure may be included in an energy savings contract.

**PUBLIC LAW 104 – SENATE ENROLLED ACT 52 – EFFECTIVE AUGUST 1, 2002**

**TAXING SITUUS OF MOBILE TELECOMMUNICATIONS SERVICE** - Amends IC 6-2.5-4-6 and IC 36-8-16.5 – Adds IC 6-8.1-15 – Defines the taxing situs as the place of primary use for those persons using mobile telecommunications equipment.

**PUBLIC LAW 113 – SENATE ENROLLED ACT 318 – EFFECTIVE JULY 1, 2002**

**ENTERPRISE ZONE BOARD** – Amends IC 4-4-6.1-1 – Adds the president of the Association of Indiana Enterprise zones as a nonvoting advisory member of the board.

**REDEVELOPMENT COMMISSIONS – SALE OF LAND** – Amends IC 36-7-1.4-22 and IC 36-7-15-15.2 – Allows a redevelopment commission to sell or grant, at no cost, title to real property under certain conditions to an urban enterprise association.

**PUBLIC LAW 115 – SENATE ENROLLED ACT 357 – EFFECTIVE VARIOUS DATES**

**STATE BOARD OF TAX COMMISSIONERS (SBTC) REFERENCES IN THE INDIANA CODE** – Amends several sections of the Indiana Code – Changes all of the references to the SBTC to the Department of Local Government Finance (DLGF) or Indiana Board of Tax Review (IBTR).

**PUBLIC LAW 116 – SENATE ENROLLED ACT 367 – EFFECTIVE JANUARY 1, 2003**

**CRIMINAL HISTORY CHECKS – SEX AND VIOLENT OFFENDER DIRECTORY** – Amends IC 5-2-6, IC 5-2-12, IC 31-37-19-5, IC 35-38-2, IC 35-43-2-1, IC 35-50-2-1, IC 35-50-6-1 and IC 36-8-10-21 – Adds IC 5-2-6-3.5, IC 35-38-2-2.5 and IC 36-2-13-5.5 – Changes the name of the former “registry” to “directory.” Makes numerous changes to the laws dealing with the registration of sex offenders.

**PUBLIC LAW 126 – HOUSE ENROLLED ACT 1101 – EFFECTIVE JANUARY 1, 2003**

**ELECTION LAW CHANGES** – Amends and adds to several articles in Title 3 of the Indiana Code Amends IC 36-1-8-10 – Makes numerous changes to voter registration, absentee ballot, campaign finance, and precinct boundary laws.

**PUBLIC LAW 128 – HOUSE ENROLLED ACT 1121 – EFFECTIVE MARCH 26, 2002**

**TRAFFIC REGULATION ON PRIVATE ROADS** – Amends IC 9-21-1-2 – States that after a request has been made at a public meeting or by certified mail to the legislative body (as defined in IC 36-1-2-9) from the property owner, a local authority may adopt by ordinance additional traffic regulations with respect to a private road within the authority’s jurisdiction. The ordinance:

- (1) must require a contractual agreement between the local authority and property owner of the private road setting forth the terms and responsibilities of the additional traffic regulations;
- (2) must require the contractual agreement to be recorded after passage of the ordinance in the office of the recorder of the county in which the private road is located; and
- (3) may not conflict with or duplicate state law.

PUBLIC LAW 140 – SENATE ENROLLED ACT 249 – EFFECTIVE JULY 1, 2002

CUMULATIVE CAPITAL IMPROVEMENT (CCI) FUND – Amends IC 6-7-1-31.1 – Allows CCI fund moneys funded from cigarette taxes to be used to :

- (1) design, develop, purchase, lease, upgrade, maintain, or repair:
  - (A) computer hardware;
  - (B) computer software;
  - (C) wiring and computer networks; and
  - (D) communications access systems used to connect with computer networks or electronic gateways;
- (2) pay for the services of full-time or part-time computer maintenance employees;
- (3) conduct nonrecurring in-service technology training of unit employees; or
- (4) undertake Internet application development.

CUMULATIVE FIRE BUILDING AND EQUIPMENT FUND – Amends IC 36-8-14-2 – Allows such fund to be used to purchase land.

PUBLIC LAW 141 – SENATE ENROLLED ACT 315 – EFFECTIVE JULY 1, 2002

AUTOMATED RECORD KEEPING FEE – Amends IC 33-19-6-19 – Raises the amount of the fee from two dollars (\$2) to five dollars (\$5) on July 1, 2002, and from five dollars (\$5) to seven dollars (\$7) on July 1, 2003, until June 30, 2009, when the fee will be reduced to four dollars (\$4).

PUBLIC LAW 143 – SENATE ENROLLED ACT 401 – EFFECTIVE MARCH 27, 2002

ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES – Amends IC 9-13-2, IC 9-21-1 and IC 9-25-4-1 – Adds IC 9-13-2-49.3, IC 9-21-1-3.5, IC 9-21-9-0.5 and IC 9-30-7-0.5 – Prohibits a city or town from regulating certain motorized carts on paths set aside for bicycles.

PUBLIC LAW 146 – SENATE ENROLLED ACT 462 – EFFECTIVE JULY 1, 2002

HIGH IMPACT BUSINESS DESIGNATION – TIPPECANOE COUNTY – Adds IC 6-1.1-10.1 – Creates a new commission in Tippecanoe County to award property tax credits to qualifying high impact businesses.

PUBLIC LAW 148 – SENATE ENROLLED ACT 508 – EFFECTIVE JULY 1, 2002

REGULATION OF DAMS – Amends IC 14-8-2-195, IC 14-8-2-268, IC 14-8-2-29-8.5, IC 14-27-7-3, IC 14-27-7-4, 5, 6, 7, 8 and 9 – Adds IC 14-27-7.5 – Changes the inspection requirements for the inspection of dams by the Department of Natural Resources (DNR). Requires DNR to assign hazard classifications to each dam and requires owners of high hazard structures to have inspections performed once every two (2) years.

PUBLIC LAW 150 – HOUSE ENROLLED ACT 1081 – EFFECTIVE JULY 1, 2002

TOWN POLICE OFFICERS – PAYMENT OF CERTAIN HEALTH CARE EXPENSES – Adds IC 36-8-9-8 – States that a town shall pay for the care of a full-time, paid police officer who:

- (1) suffers an injury; or
  - (2) contracts an illness;
- during the performance of the officer's duty.

The town shall pay for the following expenses incurred by a police officer;

- (1) Medical and surgical care.
- (2) Medicines and laboratory, curative, and palliative agents and means.
- (3) X-ray, diagnostic, and therapeutic service, including during the recovery period.
- (4) Hospital and special nursing care if the physician or surgeon in charge considers it necessary for proper recovery.

Expenditures shall be paid from the general fund of the town.

**PUBLIC LAW 150 – HOUSE ENROLLED ACT 1081 – EFFECTIVE JULY 1, 2002 (Continued)**

A town that has paid for the care of a police officer has a cause of action for reimbursement of the amount paid against any third party against whom the police officer has a cause of action for an injury sustained because of, or an illness caused by, the third party. The town's cause of action is in addition to, and not in lieu of, the cause of action of the police officer against the third party.

**PUBLIC LAW 151 – HOUSE ENROLLED ACT 1088 – EFFECTIVE MARCH 27, 2002**

REASSESSMENT – LAKE COUNTY – Amends IC 6-11-4, IC 33-3-5-2.5 and 33-3-5-2.5 – Makes several changes to the laws which enables the Department of Local Government Finance to contract with a certified public accounting firm with expertise in the appraisal of real property to appraise property for the March 1, 2002, general reassessment in Lake County.

**PUBLIC LAW 153 – HOUSE ENROLLED ACT 1208 – EFFECTIVE JULY 1, 2002**

VOLUNTEER FIRE DEPARTMENTS – DISPLAY OF BLUE LIGHTS – Amends IC 36-8-12-11 – States that lights must have a light source of thirty-five (35) watts and can be placed on the dashboard of a vehicle. Allows for alternating flashing headlights and strobe lights to be used as supplemental lights.

**PUBLIC LAW 156 HOUSE ENROLLED ACT 1378 – EFFECTIVE JULY 1, 2002**

EMERGENCY TELEPHONE SYSTEM FEES – Amends IC 36-8-16-14 – Allows such fees to be used for the lease, purchase, construction, or maintenance of voice and data communications equipment, communications infrastructure, or other information technology necessary to provide emergency response services under the authority of the unit imposing the fee.

**PUBLIC LAW 157 SENATE ENROLLED ACT 17 – EFFECTIVE MARCH 28, 2002**

STATE RAINY DAY FUND LOANS – TAXING UNITS IN PORTER COUNTY – Adds IC 6-1.1-21.8 – Amends IC 6-3.5-1.1-10 and IC 6-3.5-7-16 – Allows the State Board of Finance to make loans from the State's Rainy Day Fund to taxing units in Porter County that will experience budget shortfalls because of a steel manufacturer filing for bankruptcy. Such loans must be repaid within ten (10) years with interest based upon the increase in the Consumer Price Index over the previous twelve (12) months as of the date of the application for the loan. Provides that if the County adopts the county adjusted gross income tax, the county option income tax, or the county economic development income tax, interest on such loans will cease to accrue.

**PUBLIC LAW 161 – SENATE ENROLLED ACT 99 – EFFECTIVE JULY 1, 2002**

COUNTY ONSITE WASTE MANAGEMENT DISTRICTS – Amends IC 6-2.1-3-33 – Adds IC 36-11 – Allows counties to create onsite waste management districts. (See Public Law 172 for similar provisions.)

**PUBLIC LAW 164 – SENATE ENROLLED ACT 248 – EFFECTIVE JULY 1, 2002**

SMALL CLAIMS ACTIONS – Amends IC 33-19-5-5 – States that a court may not collect a small claim costs fee for a small claim action filed by or on behalf of the attorney general.

**PUBLIC LAW 168 – SENATE ENROLLED ACT 343 – EFFECTIVE JULY 1, 2002**

DRUG COURTS – Adds IC 12-7-2-73.5, IC 12-23-14-19, IC 12-23-14.5 and IC 33-19-6-22 – Amends IC 12-23-14-3, IC 12-23-14-6, IC 33-13-14-7, IC 33-19-8-3, IC 33-19-8-5 and IC 34-6-2-80 – Allows a city court having felony, misdemeanor, or juvenile jurisdiction in a city to establish a drug court under the court's operation. Such drug courts may provide certain intervention, treatment and rehabilitation services. Requires a new drug court to be approved by the Indiana Judicial Center and any drug court in operation before July 1, 2002 must be certified by the Indiana Judicial Center. Requires the Indiana Judicial Center to regulate such courts. The cost of a drug court may be supplemented out of the city general fund and may be further supplemented by payment from the city user fee fund.

## PUBLIC LAW 168 – SENATE ENROLLED ACT 343 – EFFECTIVE JULY 1, 2002 (Continued)

A drug court may apply for and receive gifts, grants, bequests and other forms of financial assistance approved by the court to supplement the court's budget. A city court that has established a drug court may require an eligible individual to pay a fee for drug court services not to exceed five hundred dollars (\$500). The clerk of a city court shall remit such fees monthly to the city fiscal officer for deposit in the city user fee fund. Lists criteria for a person to be admitted to a drug court.

## PUBLIC LAW 170 – SENATE ENROLLED ACT 399 – EFFECTIVE APRIL 1, 2002

CENSUS CHANGE ADJUSTMENTS TO THE INDIANA CODE – Amends numerous sections of the Indiana Code – Changes all sections which contained population references to the new 2000 census figures.

## PUBLIC LAW 171 – SENATE ENROLLED ACT 402 – EFFECTIVE JULY 1, 2002

SEWER LIENS – RECORDING – Amends IC 36-9-23-33 – Allows a county recorder to require an individual instrument for each lien instead of a list of names of owners of real property on which fees are delinquent.

## PUBLIC LAW 172 – SENATE ENROLLED ACT 461 – EFFECTIVE JULY 1, 2002

COUNTY ONSITE WASTE MANAGEMENT DISTRICTS - Amends IC 6-2.1-3 and IC 13-11 – Adds IC 13-11-2-144.7, IC 13-18-12-9, IC 16-18-2-263.5, IC 16-19-3-27 and IC 36-11 – Allows counties to establish onsite waste management districts to monitor septic systems in counties. Allows a portion of a city or town to be included in a district if the city or town possess an ordinance or resolution designating that area to be included in the district.

## PUBLIC LAW 174 – HOUSE ENROLLED ACT 1104 – EFFECTIVE JULY 1, 2002

VACANCY ON A TOWN COUNCIL – Adds IC 3-13-11-3.5, IC 5-8-5 and IC 36-5-2-6.2 – Amends IC 3-13-9-4 and IC 3-13-11-3 – States that a vacancy on a town legislative body is created whenever any of the following occur:

- (1) a member resigns;
- (2) a member dies; or
- (3) a member ceases to be a resident of the town or district as set forth in IC 36-5-2-6.

Allows a town council to hold a public meeting to determine whether a circumstance has occurred that results in a vacancy. Allows a person to petition the council to set a meeting to make such determination. Permits a town council to grant or deny a petition for a meeting.

If the town council is reasonably satisfied that any circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(4), the council may, by an affirmative vote of a majority of the members appointed to the body, vote to declare a vacancy in the town council membership. The member who is alleged to have vacated the member's seat may participate in the meeting as a member, but may not vote on the issue.

If the member who is the subject of the petition or motion does not attend the meeting at which the town council makes the determination that a vacancy exists, the town council shall mail notice of its determination to the member.

If the town council determines that a vacancy exists, the town clerk-treasurer shall give the circuit court clerk notice of the determination not later than five (5) days after the date of the town council's determination. The circuit court clerk shall give notice to the county chairman if a caucus is required under IC 3-13-11 to fill the vacancy.

The member whose seat is vacated may file an action under IC 34-17-1 with the circuit court of the county where the town is located.

PUBLIC LAW 174 – HOUSE ENROLLED ACT 1104 – EFFECTIVE JULY 1, 2002 (Continued)

Requires the town council to meet and select an individual to fill the vacancy not later than thirty (30) days after the town council determines that a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(4).

If a vacancy exists for more than thirty (30) days; the council shall meet and select an individual to fill the vacancy not later than sixty (60) days after the town council determines that a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(4).

A vacancy in a town office that was last held by a person elected or selected as a candidate for a major political party of the state shall be filled by a caucus under IC 3-13-11.

If a vacancy exists on a town council because a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(4), the caucus shall meet and select an individual to fill the vacancy not later than thirty (30) days after the county chairman receives a notice of the vacancy under IC 5-8-5. If the vacancy is due to the death of a town council member, and the county chairman is aware of the member's death before receiving a notice of the death, the caucus may meet before the county chairman receives the notice of the death.

The county chairman shall:

- (1) give notice of the caucus meeting to caucus members; and
- (2) keep the notice of the vacancy with the records of the caucus.

PUBLIC LAW 176 – HOUSE ENROLLED ACT 1138 – EFFECTIVE JULY 1, 2002

HYDRANT RENTAL – Amends IC 8-1-2-103 – Allows a city or town that does not own a water utility to pass on hydrant rental to customers of the water utility serving the city or town that live within the city or town.

STORMWATER MANAGEMENT DISTRICTS – Amends IC 8-1.5-5-7 – Allows fees charged by the district to be effectuated through a periodic billing system or through a charge appearing on the semi-annual property tax statement of the affected property owner.

CITY BUDGET ORDINANCES – Amends IC 36-4-7-11 – States that if the legislative body fails to adopt an ordinance by September 20 for third class cities or September 30 for second class cities of each year, the most recent appropriations and tax levies are continued for the ensuing budget year.

PUBLIC LAW 177 – HOUSE ENROLLED ACT 1195 – EFFECTIVE VARIOUS DATES

MOBILE HOME ASSESSMENTS – Amends IC 6-1-1-12 – Amends the laws governing certain property deductions on mobile homes.

ECONOMIC DEVELOPMENT PROJECT DISTRICTS – Amends IC 36-7-26 – Provides for an additional net increment in sales taxes to be paid to the City of South Bend.

GROSS RETAIL AND USE TAX PAYMENTS TO DEPARTMENT OF REVENUE – Amends IC 6-2.5-6-1 – Allows those persons that pay through electronic funds transfer to file a quarterly return instead of monthly.

PUBLIC LAW 178 – HOUSE ENROLLED ACT 1196 – EFFECTIVE MARCH 28, 2002

COMMUNITY REVITALIZATION ENHANCEMENT DISTRICTS – Amends IC 36-7-13-3.2 and 10.5 – Adds IC 36-7-13-10.7 – Allows for the creation of a new district in the City of Marion.

ECONOMIC DEVELOPMENT PROJECT DISTRICTS – CITY OF SOUTH BEND – Amends IC 36-7-26 – Makes several changes to the possible uses of the sales tax increment financing fund by the redevelopment commission.



PUBLIC LAW 178 – HOUSE ENROLLED ACT 1196 – EFFECTIVE MARCH 28, 2002 (Continued)  
PROFESSIONAL SPORTS DEVELOPMENT AREAS – Amends IC 36-7-31.3 – Makes several changes to the laws dealing with cities that have professional sports franchises financed by certain taxes levied in the area.

GARY BUILDING AUTHORITY – Amends IC 36-10-11 – Makes several changes to the law dealing with the Gary Building Authority.

PUBLIC LAW 184 – HOUSE ENROLLED ACT 1329 – EFFECTIVE VARIOUS DATES  
INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT (IDEM) PERMITS – Amends IC 4-21.5-3-4, IC 13-11-2, IC 13-15-4, IC 13-15-8, IC 13-18-11, IC 13-18-16, IC 13-18-17, IC 13-18-20, IC 13-18-21, IC 13-27.5-1 and IC 16-41-27 – Adds IC 13-15-11-6 – Repeals IC 13-11-2-177, IC 13-11-2-263, IC 13-15-4-12 and 13 – Requires IDEM to report NPDES permits that have been extended to the Environmental Service Quality Council. Changes references in the Indiana Code from public water supplies to public water systems.

PUBLIC LAW 185 – HOUSE ENROLLED ACT 1347 – EFFECTIVE JULY 1, 2002  
EMERGENCY AND PUBLIC SAFETY EMPLOYEES – DEATH AND DISABILITY IN THE LINE OF DUTY – Amends IC 5-10-5.5-13.5, IC 5-10-10-2, IC 36-8-4-5, IC 36-8-6-8, IC 36-8-6-10.1, IC 36-8-7-11, IC 36-8-7.5-13, IC 36-8-7.5-14.1, IC 36-8-8-12.5, IC 36-8-8-14.1 and IC 36-8-10-15 – Adds IC 5-10-13 – States that a public safety employee who is diagnosed with a health condition caused by an exposure risk disease that requires medical treatment and results in total or partial disability or death is presumed to have such disability or death incurred in the line of duty under certain circumstances. Adds this condition to the police and fire pension fund laws to allow payments of disability and death benefits to members qualifying for such benefits.

PUBLIC LAW 186 – HOUSE ENROLLED ACT 1360 – EFFECTIVE MARCH 28, 2002  
BUILD INDIANA FUND – Amends several sections of IC 4-30-17 – Adds IC 4-30-17-4.5, IC 4-30-17-11, IC 4-30-17-12 and IC 4-30-17-13 – Repeals sections 1, 5, 6, 7, 7.5, 8 and 9 of IC 4-30-17 – Permits volunteer fire departments, not-for-profit corporations exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code, and any body corporate and politic that serves an instrumentality of the State to receive Build Indiana Fund money. Requires the State Budget Agency to monitor capital projects disbursements made by recipients. Requires the State Board of Accounts to audit such disbursements. Makes several other changes to the Build Indiana Fund law.

### PUBLIC NOTICE ADVERTISING

The statute governing the publication of legal notices and annual reports may be found in IC 5-3-1. IC 5-3-1-1 details the method of calculating the compensation of the publisher which may be claimed after the notice or report has been published. After December 31, 1995, and before December 31, 2005, a newspaper or qualified publication may, effective January 1 of any year, increase the basic charges that were in effect the previous year by five percent (5%). The statute also describes the specifications which the publisher is to follow in setting the type or the notice or report.

If the notice is in relation to a public hearing or meeting, IC 5-3-1-2 requires the notice to be published one (1) time, at least ten (10) days before the date of the hearing or meeting.

If the notice is in relation to an election, the notice shall be published one (1) time, at least ten (10) days before the date of the election.

If the notice is in relation to the sale of bonds, notes or warrants, the notice shall be published two (2) times, at least one week apart, with the first publication made at least fifteen (15) days before the date of the sale and the second publication made at least three (3) days before the date of the sale.

If the notice is in relation to the receiving of bids, the notice shall be published two (2) times, at least one week apart, with the second publication made at least seven (7) days before the date bids will be received.

If the event is the establishment of a cumulative or sinking fund, notice of the proposal and of the public hearing that is required to be held shall be published two (2) times, at least one (1) week apart, with the second publication made at least three (3) days before the date of the hearing.

If the event is the submission of a proposal adopted by a city or town for a cumulative or sinking fund for the approval of the Department of Local Government Finance, the notice of the submission shall be published one (1) time. The city or town shall publish the notice when directed to do so by the Department of Local Government Finance.

If the event is required publication of an ordinance, notice of the passage of the ordinance shall be published one (1) time within thirty (30) days after the passage of the ordinance.

If the event is one about which notice is required to be published after the event, notice shall be published one (1) time within thirty (30) days after the date of the event.

If the event is anything else, the notice shall be published two (2) times, at least one week apart, with the second publication made at least three (3) days before the event.

In case any officer charged with the duty of publishing any notice required by law is unable to procure advertisement at the price fixed by law, or the newspaper refuses to publish an advertisement, it is sufficient for the official to post printed notices in three (3) prominent places in the city or town, in lieu of such advertisement in a newspaper.

If a notice of budget estimates for a city or town is published as required in IC 6-1.1-17-3, and the published notice contains an error due to the fault of a newspaper, the notice as presented for publication is a valid notice.

If a notice of budget estimates for a city or town is published as required in IC 6-1.1-17-3, and if the notice is not published at least ten (10) days before the date fixed for the public hearing on the budget estimate due to the fault of a newspaper, the notice is a valid notice if it is published one (1) time at least three (3) days before the hearing.

### PUBLIC NOTICE ADVERTISING (Continued)

IC 5-3-1-0.4 defines a newspaper for the publication of legal notices and reports as a daily, weekly, semi-weekly, or tri-weekly newspaper of general circulation which has been published for at least three (3) consecutive years in the same city or town and entered, authorized and accepted by the United States Postal Service for three (3) consecutive years as mailable matter of the periodicals class and which has at least fifty percent (50%) of all copies circulated paid for by subscribers or other purchasers at a rate that is not nominal. IC 5-3-1-4(g) allows a city or town, at its discretion, to publish public notices in a qualified publication as defined in IC 5-3-1-7 to provide supplementary notification to the public. The cost of publishing supplementary notification is a proper expenditure of the city or town.

### PROMOTION OF CITY AND TOWN BUSINESS

IC 36-7-2-7 allows cities and towns to promote economic development and tourism. Such statute replaced a prior law which authorized cities and towns to budget and appropriate funds from the general fund to pay the expenses of, or to reimburse city or town officials as the case may be, for expenses incurred in promoting the best interest of the city or town. Accordingly, a Home Rule ordinance needs to be adopted in accordance with IC 36-1-3 in order to enable a city or town to pay for such expenses.

In an effort to assist cities and towns that have not passed an enabling ordinance but who wish to establish the promotion of business appropriation, we are repeating wording contained in the old statute. Many municipalities have used similar wording in their enabling ordinance.

“City and town councils are authorized to budget and appropriate funds from the general fund of the city, or town, to pay the expenses of or to reimburse city officials or town officials as the case may be for expenses incurred in promoting the best interest of the city or town. Such expenses may include, but not necessarily be limited to, rental of meeting places, meals, decorations, memorabilia, awards, expenses incurred in promoting industrial, commercial, and residential development, expenses incurred in developing relations with other units of government and any other expenses of a civic or governmental nature deemed by the mayor or the town council to be in the interest of the city or town.”

This is furnished only for your information. Each city and town should establish, by ordinance, the parameters for such appropriations and expenditures. Such ordinance should list the specific types of promotional expenses which can be paid from moneys appropriated for such purposes.

### POLICE AND FIRE PENSION PLANS – RECORDS

The secretary of the pension fund should keep records for the board which would include the minute record and a statement of each member's account on General Form No. 315, General Ledger Sheet. A separate sheet should be opened up for each member and assessments deducted from the payroll each month should be posted as credits to this form. General Form No. 315 should also be used for posting payments of pensions and a separate sheet should be opened up for each pensioner. Pensions should be posted as debits on General Form No. 315.

The secretary should prepare a schedule of pensions to be paid from the fund on General Form No. 355, Schedule of Pension and Disability Payments, and each schedule should be signed by the President and Secretary of the fund. Claims other than for pensions should be filed on the prescribed claim form, City Form No. 201 or Town Form No. 39.

All pension fund receipts and disbursements should be posted by the secretary on General Form No. 358, Ledger of Receipts, Disbursements and Balances. The balance at the close of each month as shown on this form should be reconciled with the Clerk-Treasurer or Controller.

The actual payroll deductions will be handled by the Clerk-Treasurer or Controller and the total of such deductions receipted monthly to the Pension Fund on the Clerk-Treasurer's or Controller's records as well as the secretary's record.

### LUCRATIVE OFFICES

Official Opinion No. 13 (June 4, 1970) of the Attorney General points out that dual office-holding involves at least six major questions and three particular sections of the Indiana Constitution. The questions are:

1. Is each position a lucrative office within the meaning of the Indiana Constitution? (Article 2, Section 9 of the Indiana Constitution)
2. Is such office-holding in violation of the doctrine of the separation of powers? (Article 3, Section 1 of the Indiana Constitution)
3. Does such office-holding involve a judicial office, and another office of trust and profit under the State? (Article 7, Section 16 of the Constitution of Indiana)
4. Are such offices incompatible with each other?
5. Is there a conflict of interest?
6. Would such office-holding be against public policy?

This article is not intended to pass upon which offices are lucrative nor to discourage allowing one person to perform services for more than one department or office if such is permissible. It is intended to suggest a test through which any particular applicable situation should favorably pass before the same person is employed in more than one capacity or enters upon the holding of more than one office.

If a question arises concerning this matter, the city or town attorney should be consulted.

Some city and town offices have been determined to be lucrative by the Office of the Attorney General. Official Opinions No. 88-2 and No. 89-4 both concluded that the position of town board member (presently town council member) would be a lucrative office. Furthermore, Official Opinion No. 91-14 held that the position of a city council member was also a lucrative office.

FORFEITED BONDS – CITY AND TOWN COURTS

IC 35-33-8-7 states that if a defendant:

- (1) was admitted to bail under IC 35-33-8-3.2(a)(2); and
- (2) has failed to appear before the court as ordered;

the court shall issue a warrant for the defendant's arrest.

In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under IC 35-33-8-3.2(a)(2) may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry or final judgment in favor of the plaintiff in the civil action, and if the deposit and the bond are subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, and the bond forfeited.

Any proceedings concerning the bond, or its forfeiture, judgment, or execution of judgment, shall be held in the court that admitted the defendant to bail.

After a bond has been forfeited, the clerk shall mail notice of forfeiture to the defendant. In addition, unless the court finds that there was justification for the defendant's failure to appear, the court shall immediately enter judgment, without pleadings and without change of judge or change of venue, against the defendant for the amount of the bail bond, and the clerk shall record the judgment.

If a bond is forfeited and the court has entered a judgment, the clerk shall transfer to the state common school fund:

- (1) any amount remaining on deposit with the court (less the fees retained by the clerk); and
- (2) any amount collected in satisfaction of the judgment.

The clerk shall return a deposit, less the administrative fee, made under IC 35-33-8-3.2(a)(2) to the defendant, if the defendant appeared at trial and the other critical stages of the legal proceedings.

SPREADSHEET SOFTWARE UTILIZATION TO GENERATE  
EXACT REPLICAS OF PRESCRIBED FORMS

The Indiana State Board of Accounts prescribes the forms to be utilized in accounting systems, but does not specify the source from which the prescribed forms must be obtained. With the current capabilities of spreadsheet software, the use of spreadsheet software may, in some instances, be an acceptable method of generating exact replicas of prescribed forms.

Spreadsheets may not be utilized to replace functionality that should be an integral function of a computerized accounting system or replace a controlled document for the entry of accounting information. Examples of this type of form include forms that are required to be either prenumbered by an outside printing supplier or numbered by the accounting system with sufficient controls to prevent unauthorized generation of the form or duplication of control numbers on the forms. These forms include receipts, checks, purchase orders and material receiving documents. In addition, spreadsheets should not be utilized to generate control documents such as ledgers, receipt registers, check registers, outstanding check lists and similar reports.

Under no circumstances is it acceptable to implement an electronic interface from spreadsheet software directly to the information files of an accounting system without being processed through the same edit and control features as are utilized to ensure the accuracy of information entered manually into the accounting system.

Exact replicas of prescribed forms generated by spreadsheet software may be utilized for forms incidental to the computerized accounting system. Examples of these forms include travel vouchers, attendance records, and fixed asset records.

If you have any questions on the utilization of spreadsheet software to replicate a specific prescribed form, please contact our Information Technology Services department at (317) 232-4964.

MUNICIPAL ELECTION EXPENSES - ALL CITIES AND TOWNS 3,500 AND OVER

The expenses of city and large town primaries and elections are paid by the county with each city and large town conducting a primary or election being billed for its share of the expenses. Each city or large town should budget as one item, the local amount of such expenses under "Other Services and Charges" in the budget for the election year for the total estimated amount to be paid to the county. The county auditor or clerk of the circuit court can supply information as to the amount to be included for primary and election expenses. IC 3-5-3-8 and IC 3-5-3-9 provides the procedure for the county to allocate primary and election costs to all cities and those towns with populations of 3,500 and over.

Your City or Town Attorney and the State Election Board should be consulted for guidance on questions related to city elections and for town elections in those towns with populations of 3,500 and over.

MUNICIPAL ELECTION EXPENSES - TOWNS UNDER 3,500

The expenses of a town primary and election in a town with less than 3,500 population are to be paid directly by the town, unless the town has passed an ordinance to have the county conduct its primary election under IC 3-8-5-2 or regular election under IC 3-10-7-4. It is recommended that the total amount of such expenses be budgeted as one item under "Other Services and Charges" in the General Fund. (IC 3-10-7-16 and IC 3-10-7-17)

The following are some Indiana Code sections of interest for towns under 3,500 populations:

- |              |   |
|--------------|---|
| IC 3-8-5     | - Nomination of Candidates by Convention        |
| IC 3-8-6     | - Nomination by Petition                        |
| IC 3-10-7-7  | - Town Elections Boards, Establishment, Members |
| IC 3-10-7-4  | - Conduct of Elections                          |
| IC 3-10-7-16 | - Employees                                     |
| IC 3-10-7-17 | - Purchase of Materials, Supplies, Equipment    |
| IC 3-10-7-20 | - Compensation of Members                       |
| IC 3-10-7-21 | - Powers and Duties                             |

The Town Attorney and the State Election Board should be consulted for guidance on any questions related to town elections.

MUNICIPAL ELECTION EXPENSES - TOWNS UNDER 500

IC 3-10-7-5.5 provides that the county election board shall conduct the municipal election unless the town council establishes a town election board to conduct the election.